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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 3, 9, 13, 16, 22, 25, and 52

[FAC 2020-07; FAR Case 2018-004; Item II; Docket No. FAR-2018-0011; Sequence No. 1]

RIN 9000-AN65

Federal Acquisition Regulation: Increased Micro-Purchase and Simplified Acquisition Thresholds

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement a section of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 and several sections of the NDAA for FY 2018 that increase the micro-purchase threshold (MPT), increase the simplified acquisition threshold (SAT), and clarify certain procurement terms, as well as align some non-statutory thresholds with the MPT and SAT.

DATES: *Effective:* [Insert date 60 days after date of publication in the *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Mr. Michael O. Jackson, Procurement Analyst, at 202-208-4949 or *michaelo.jackson@gsa.gov* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755. Please cite FAC 2020-07, FAR Case 2018-004.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule on October 2, 2019, at 84 FR 52420, to implement section 217(b) of the NDAA for FY 2017 (Pub. L. 114-328) and sections 805, 806, and 1702(a) of the NDAA for FY 2018 (Pub. L. 115-91).

Section 217(b) amends 41 U.S.C. 1902 to increase the MPT for acquisitions from institutions of higher education or related or affiliated nonprofit entities, or from nonprofit research organizations or independent research institutes, from \$3,500 to \$10,000, or a higher amount as determined appropriate by the head of the agency and consistent with clean audit findings under 31 U.S.C. Chapter 75, an internal institutional risk assessment, or State law.

Section 806 increases the MPT in 41 U.S.C. 1902(a) to \$10,000.

Section 805 increases the SAT to \$250,000.

Section 1702(a) amends section 15(j)(1) of the Small Business Act (15 U.S.C. 644(j)(1)) to replace specific dollar thresholds with the terms "micro-purchase threshold" and "simplified acquisition threshold."

These FAR changes also replace non-statutory, stated numerical dollar thresholds that are intended to correspond with the MPT and SAT, with the text "micro-purchase threshold" and "simplified acquisition threshold." Referencing some stated thresholds by name instead of by a specific dollar value will ease maintenance of regulations, given the likelihood of future changes to the threshold amounts. Text clarifying the use of the approval thresholds, based on the increase of the SAT, for sole source justifications executed under the simplified procedures for certain commercial items has been added to FAR subpart 13.5.

Six respondents submitted comments on the proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils)

reviewed the public comments in the development of the final rule. A discussion of the comments is provided as follows:

A. Summary of changes

There are no changes as a result of comments on the proposed rule.

B. Analysis of public comments

Comment: Several respondents expressed support for the rule.

Response: The Councils acknowledge the public support for the rule.

Comment: One respondent questioned whether the FAR text change at FAR 22.1803 was made in error. This respondent also questioned whether the change should have been at FAR 22.1303 in lieu of FAR 22.1803. The respondent noted that there are two more sections in FAR part 22 that reflect the amount of \$150,000, and if they should have been updated to the "simplified acquisition threshold."

Response: The change at FAR 22.1803 was not in error; the change from simplified acquisition threshold to \$150,000 was intentional. The sections cited by the respondent are not based on the SAT statute but on other statutes: 38 U.S.C. 4212 and 40 U.S.C. 3701(b)(3)(iii). The Councils have no other changes for FAR part 22.

Comment: One respondent commented that the rule proposes a change to the prime contract coverage threshold for E-Verify (FAR 22.1803) from the simplified acquisition threshold to \$150,000, thereby not exempting contracts between \$150,000 and \$250,000, from E-Verify. The respondent stated that by setting the prime contract threshold below the SAT, particularly when the threshold was previously set at the SAT, goes against the spirit of 41 U.S.C. 1905(b)(2).

Response: The Administration has stated its broad desire to "require the use of the electronic status-verification system ("E-Verify") to ensure the maintenance of a legal workforce in the United States." See: <https://www.whitehouse.gov/briefings-statements/president-donald-j-trumps-letter-house-senate-leaders-immigration-principles-policies/>. Exempting contracts between \$150,000 and \$250,000 would run counter to the stated policy objective.

C. Other changes

Some changes included in the proposed rule are not required in the final rule as a result of publication of the final rule under FAR Case 2018-007 in FAC 2020-06 on May 6, 2020, effective June 5, 2020.

III. Expected Impact of the Final Rule and Proposed Cost Savings

DoD, GSA, and NASA have performed a regulatory cost analysis on this rule. The following is a summary of the estimated public and Government cost savings. This rule impacts any business, large or small, that prepares quotes exceeding \$3,500 (\$5,000 for DoD) and not exceeding \$10,000 (or higher for select educational institutions); proposals exceeding \$150,000 and not exceeding \$250,000; and proposals exceeding \$300,000 and not exceeding \$500,000, in support of humanitarian or peacekeeping operations. This rule does not add any new solicitation provisions or contract clauses. Rather, it reduces burden on contractors by increasing the thresholds at which various regulatory burdens apply.

Increasing the MPT and SAT means additional awards could be made under the MPT and additional awards could be made under the SAT. The additional awards at or below the MPT would not require provisions or clauses, except as provided in FAR 13.202 and FAR 32.1110, and the additional awards at or below the SAT would be awarded without provisions and clauses which are prescribed only above the SAT. In addition to including fewer regulations in applicable awards, the rule allows more awards based on

quotes in lieu of a formal proposal, thereby reducing the contractor's bid and proposal costs. Costs associated with contractor financing could also be reduced by increasing the number of micro-purchases, for which the Governmentwide purchase card is the preferred method of purchase and payment (see FAR 13.201(b)).

To determine the dollar amounts and entities affected, data was pulled from the Federal Procurement Data System (FPDS) from fiscal years 2015-2018. For the micro-purchase value change, there was an annual average in total impacted contract awards of \$2,442,317 for small businesses and \$1,359,916 for other than small businesses for contracts with values exceeding \$3,500 (\$5,000 for DOD), but less than or equal to \$10,000 (or higher, for educational institutions). For the simplified acquisition threshold change, there was an annual average in total impacted contract awards of \$300,073,039 for small businesses and \$161,715,144 for other than small businesses for contracts with values exceeding \$150,000, but less than or equal to \$250,000 (from \$300,000 to \$500,000 for contingency, humanitarian, or peacekeeping awards).

Commercial item awards, as well as orders placed through indefinite-quantity contract orders and other large contracting schedule orders, were removed from this

calculation to determine the cost reduction on offerors and contractors. Commercial items were removed from this calculation because the simplified threshold for commercial item awards is set at \$7 million, so the increased SAT threshold would not impact compliance or business procedures for contractors with awards conducted through commercial item procedures. To calculate the burden reduction on Government by raising these thresholds, indefinite-quantity contracts were included, as the threshold changes would impact Government acquisition procedures.

The Federal Acquisition Streamlining Act (FASA) made a number of laws inapplicable to items procured under the SAT. This was meant to save both the Government and service providers money while also expediting the entire contract process. This rule decreases the number of regulatory requirements agencies need to include in awards.

Because this rule reduces bid and proposal costs and other administrative burdens and since it does not implement any new requirements on offerors, this rule is considered to be deregulatory.

The following is a summary of the estimated public and Government cost savings calculated in perpetuity in 2016 dollars at a 7 percent discount rate:

Summary	Public	Government	Total
Present Value Cost Savings	-\$662,413,271	-\$2,216,678,757	-\$2,879,092,029
Annualized Cost Savings	-\$46,368,929	-\$155,167,513	-\$201,536,442
Annualized Value Cost Savings as of 2016 if Year 1 is 2020	-\$37,850,858	-\$126,662,911	-\$164,513,770

To access the full Regulatory Cost Analysis for this rule, go to the Federal eRulemaking Portal at www.regulations.gov, search for "FAR Case 2018-004," click "Open Docket," and view "Supporting Documents."

IV. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

The rule applies to contracts at or below the simplified acquisition threshold, and to contracts for commercial items, including COTS items. However, it does not add any new solicitation provisions or contract clauses, and it reduces burden on contractors by increasing the thresholds at which various regulatory burdens apply.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available

regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is an economically significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is a major rule under 5 U.S.C. 804.

VI. Congressional Review Act

This rule is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq.) and was transmitted to the Congress and to the Comptroller General for review in accordance with such provisions.

VII. Executive Order 13771

This final rule is considered to be an E.O. 13771 deregulatory action. The total annualized value of the cost savings, discounted at a 7 percent rate relative to year 2016 over a perpetual time horizon, is -\$164,513,770. Details on the estimated cost savings can be found in Section III of this preamble.

VIII. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The FRFA is summarized as follows:

This rule is required to implement section 217(b) of the NDAA for FY 2017 (Pub. L. 114-328) and sections 805, 806, and 1702(a) of the NDAA for FY 2018 (Pub. L. 115-91). This final rule increases the MPT, increases the SAT, clarifies certain procurement terms, as well as aligns non-statutory, stated dollar thresholds that are intended to correspond with the MPT and SAT, with word-based thresholds to ensure continued alignment with the current increase to these thresholds and any future change to the threshold amounts.

There were no significant issues raised by the public in response to the initial regulatory flexibility analysis.

This rule applies to all entities who do business with the Federal Government. This rule will likely have a positive significant economic impact on a substantial number of small entities. According to data from the Federal Procurement Data System (FPDS), there were 505 contracts awarded in FY 2018 with a value exceeding \$3,500 (\$5,000 for DOD), but less than or equal to \$10,000 wherein contractors would have a change in compliance requirements. Of the 505 new awards, 358 (71 percent) of these actions were awarded to 198 unique small business entities.

Data from FPDS also indicates that in FY 2018, there were no (0) small business entities that had additional contract actions for educational or related institutions for contracts with a value exceeding \$10,000, but less than or equal to \$15,000 (equivalent to the upper bound of the expected micro-purchase value for these types of institutions) wherein contractors would have a change in compliance requirements.

Data from FPDS also indicates there were 3,653 new contracts awarded in FY 2018 with a value exceeding 150,000, but less than or equal to \$250,000 wherein contractors would have a change in compliance requirements. Of these, 2,621 (72 percent) of these actions were awarded to 1,680 unique small business entities.

As mentioned previously, commercial items were removed from this calculation because the simplified threshold for commercial item awards is set at \$7 million, so the increased SAT threshold would not impact compliance or business procedures for contractors with awards conducted through commercial item procedures.

Data from the FPDS further indicates that for contingency, humanitarian, or peacekeeping contract actions, there were 11 new total contracts awarded in FY 2018 with a value exceeding \$300,000 but less than or equal to \$500,000 wherein contractors would have a change in compliance requirements. Of these, 4 (36 percent) of these actions were awarded to 4 unique small business entities.

This rule changes the small business set aside threshold under FAR 19.502; instead of being from greater than \$3,500 to less than or equal to \$150,000, the threshold will be from greater than \$10,000 to less than or equal to \$250,000. This is expected to increase the number of small business entities able to do business with the Government; for contracts affected by this threshold change, (please see full regulatory cost analysis for explanation of excepted contract types), in FY 2018, there were 3,653 records exceeding \$150,000 and less than or equal to \$250,000, while there were 505 records exceeding \$3,500 (\$5,000 for DOD) and less than or equal to \$10,000.

As of September 30, 2017, there were 637,791 active entity registrations in SAM. Of those active entity registrations, 452,310 (71 percent) completed all four modules of the registration, in accordance with the definition "Registered in the System for Award Management (SAM)" at FAR 52.204-7(a), including Assertions (where they enter their size metrics and select their NAICS Codes) and Reqs & Certs (where they certify to the information they provided and the size indicator by NAICS). Of the possible 452,310 active SAM entity registrations, 338,207 (75 percent) certified to meeting the size standard of small for their primary NAICS Code. Therefore, this rule may be beneficial to 338,207 small business entities that submit solicitation responses that may now fall under the MPT or SAT and have streamlined procedures as a result of this rule.

The rule does not include additional reporting or record keeping requirements.

There are no available alternatives to the rule to accomplish the desired objective of the statute.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

IX. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 2, 3, 9, 13, 16, 22, 25, and 52

Government procurement.

William F. Clark,
Director,
Office of Government-wide
Acquisition Policy,
Office of Acquisition Policy,
Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 3, 9, 13, 16, 22, 25, and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 3, 9, 13, 16, 22, 25, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101, in paragraph (b) by—

a. In the definition “Micro-purchase threshold” removing from the introductory text “\$3,500” and adding “\$10,000” in its place, removing from paragraph (2) the word “and” at the end of the sentence, removing from paragraph (3)(ii) “States.” and adding “States; and” in its place, and adding paragraph (4); and

b. In the definition “Simplified acquisition threshold” removing from the introductory text “\$150,000” and adding “\$250,000” in its place, and removing from paragraph (2) “\$300,000” and adding “\$500,000” in its place.

The addition reads as follows:

2.101 Definitions.

* * * * *

(b) * * *

Micro-purchase threshold * * *

(4) For acquisitions of supplies or services from institutions of higher education (20 U.S.C. 1001(a)) or related or affiliated nonprofit entities, or from nonprofit research organizations or independent research institutes—

(i) \$10,000; or

(ii) A higher threshold, as determined appropriate by the head of the agency and consistent with clean audit findings under 31 U.S.C. chapter 75, Requirements for Single Audits; an internal institutional risk assessment; or State law.

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PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3.502-3 [Amended]

3. Amend section 3.502-3 by removing “the simplified acquisition threshold” and adding “\$150,000” in its place.

PART 9—CONTRACTOR QUALIFICATIONS

9.104-5 [Amended]

4. Amend section 9.104-5 by removing from paragraph (a) (2) “\$3,500” and adding “\$10,000” in its place.

9.406-2 [Amended]

5. Amend section 9.406-2 by removing from paragraph (b) (1) (v) “\$3,500” and adding “the threshold at 9.104-5(a) (2)” in its place.

9.407-2 [Amended]

6. Amend section 9.407-2 by removing from paragraph (a) (7) "\$3,500" and adding "the threshold at 9.104-5(a) (2)" in its place.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

7. Amend section 13.005 by revising paragraph (a) to read as follows:

13.005 List of laws inapplicable to contracts and subcontracts at or below the simplified acquisition threshold.

(a) The following laws are inapplicable to all contracts and subcontracts (if otherwise applicable to subcontracts) at or below the simplified acquisition threshold pursuant to 41 U.S.C. 1905:

(1) 41 U.S.C. 8102(a) (1) (Drug-Free Workplace), except for individuals.

(2) 10 U.S.C. 2306(b) and 41 U.S.C. 3901(b) (Contract Clause Regarding Contingent Fees).

(3) 10 U.S.C. 2313 and 41 U.S.C. 4706 (Authority to Examine Books and Records of Contractors).

(4) 10 U.S.C. 2402 and 41 U.S.C. 4704 (Prohibition on Limiting Subcontractors Direct Sales to the United States).

(5) 15 U.S.C. 631 note (HUBZone Act of 1997), except for 15 U.S.C. 657a(b) (2) (B), which is optional for the agencies subject to the requirements of the Act.

(6) 31 U.S.C. 1354(a) (Limitation on use of appropriated funds for contracts with entities not meeting veterans employment reporting requirements).

(7) 22 U.S.C. 2593e (Measures Against Persons Involved in Activities that Violate Arms Control Treaties or Agreements with the United States). (The requirement at 22 U.S.C. 2593e(c) (3) (B) to provide a certification does not apply).

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13.501 [Amended]

8. Amend section 13.501 by removing from paragraph (a) (2) (ii) "\$700,000" and adding "\$700,000 or the thresholds in paragraph (1) of the definition of simplified acquisition threshold in 2.101," in its place.

PART 16—TYPES OF CONTRACTS

16.206-2 [Amended]

9. Amend section 16.206-2 by removing from the introductory text "\$150,000" and adding "the simplified acquisition threshold" in its place.

16.206-3 [Amended]

10. Amend section 16.206-3 by removing from paragraph (a) "\$150,000" and adding "the simplified acquisition threshold" in its place.

16.207-3 [Amended]

11. Amend section 16.207-3 by removing from paragraph (d) "\$150,000" and adding "the simplified acquisition threshold" in its place.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT

ACQUISITIONS

22.1803 [Amended]

12. Amend section 22.1803 by removing from the introductory text "the simplified acquisition threshold" and adding "\$150,000" in its place.

PART 25—FOREIGN ACQUISITION

25.703-2 [Amended]

13. Amend section 25.703-2 by removing from paragraph (a) (2) "\$3,500" and adding "\$10,000" in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

14. Amend section 52.209-5 by revising the date of the provision and removing from paragraph (a) (1) (i) (D) introductory text "\$3,500" and adding "the threshold at 9.104-5(a) (2)" in its place.

The revision reads as follows:

52.209-5 Certification Regarding Responsibility Matters.

* * * * *

CERTIFICATION REGARDING RESPONSIBILITY MATTERS ([**INSERT ABBREVIATED MONTH
AND YEAR 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER***])

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15. Amend section 52.212-3 by—

(a) Revising the date of the provision; and

(b) Removing from paragraph (h) (4) introductory
text “\$3,500” and adding “the threshold at 9.104-5(a) (2)”
in its place.

The revision reads as follows:

**52.212-3 Offeror Representations and Certifications—
Commercial Items.**

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OFFEROR REPRESENTATIONS AND CERTIFICATIONS—COMMERCIAL ITEMS ([**INSERT
ABBREVIATED MONTH AND YEAR 60 DAYS AFTER DATE OF PUBLICATION IN THE
*FEDERAL REGISTER***])

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